



## STATEMENT OF THE CASE

Defendant-Appellant Ray D. Robertson (“Robertson”) brings this direct appeal from his conviction by a jury of the Class C felony of battery.

We affirm.

## ISSUE

Robertson states the issue as whether the court abused its discretion by not granting Defendant’s Motion for Mistrial due to prosecutorial misconduct.

## FACTS

The issue of self-defense was raised at Robertson’s trial. The State asked Robertson whether Robertson had tried to locate witnesses. Robertson objected to the question and asked for a mistrial. The trial court overruled the motion for mistrial, struck the Prosecutor’s comment from the record, instructed the jury to disregard the portion of the question that was asked.

## DISCUSSION AND DECISION

It is Robertson’s argument that prosecutorial misconduct occurred when the State asked a question that implied that Robertson had to prove self-defense. In actuality, when the defense of self-defense is raised, the State has the burden of disproving one or more of the three elements that comprise self-defense. *Pinkston v. State*, 821 N.E.2d 830, 841 (Ind. Ct. App. 2004).

On appeal, the trial judge’s discretion in determining whether to grant a mistrial is afforded great deference because the judge is in the best position to gauge the surrounding circumstances of an event and its impact on the jury. We therefore review the trial court’s decision solely for an abuse of discretion. After all, a mistrial is an extreme remedy that is only justified

when other remedial measures are insufficient to rectify the situation. To prevail on appeal from the denial of a motion for mistrial, the defendant must establish that the questioned conduct “was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected”. The gravity of the peril is determined by considering the probable persuasive effect of the misconduct on the jury’s decision, not the impropriety of the conduct.

*Shouse v. State*, 849 N.E.2d 650, 655 (Ind. Ct. App. 2006). (Citations omitted.)

We also note that reversible error is seldom found when the trial court has admonished the jury to disregard a statement made during the proceedings, because a timely and accurate admonition to the jury is presumed to sufficiently protect a defendant’s rights and remove any error created by the objectionable statement. *Lehman v. State*, 777 N.E.2d 69, 72 (Ind. Ct. App. 2002).

Robertson’s trial counsel made an immediate objection to a partially asked question. It is difficult to imagine that a partially asked question during a trial that lasted all day would have the effect of putting Robertson in a position of grave peril. The probable persuasive effect in influencing the jury’s decision is, in all likelihood, most minimal.

Although the question was inappropriate, it did not place Robertson in grave peril. Moreover, the question was stricken from the record and the jury admonished to disregard the comment. We afford great deference to the trial judge’s ruling on the motion for a mistrial and recognize that the admonishment of the jury sufficiently protected the defendant’s rights. There was no abuse of discretion in denying the mistrial motion.

### CONCLUSION

The trial court correctly ruled on the motion for mistrial. Judgment affirmed.

ROBB, J., and VAIDIK, J., concur.